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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
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9 RICHARD REES, et al.,) Case No. 1:05-cv-00297-AWI-TAG
10 Plaintiff,)
11 v.) ORDER GRANTING MOTION FOR
12 SOUZA'S MILK TRANSPORTATION,) ORDER APPROVING NOTICE TO
13 CO., et al.,) POTENTIAL CLASS 2 MEMBERS
14 Defendants.) (Doc. 62)

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16 **PROCEDURAL HISTORY**

17 This case involves claims for unpaid overtime compensation brought by representative
18 plaintiffs on behalf of themselves and other truck drivers. (Doc. 1). Two classes have been
19 certified, one for claims under the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 210 et seq.
20 (the "opt-in" class), and another for relief under the California Unfair Competition Law ("UCL"),
21 Cal. Bus. & Prof. Code § 17200, et seq. (the "opt-out" class). (Docs. 30 & 32).

22 On May 5, 2006, United States Magistrate Judge Lawrence J. O'Neill issued an Order,
23 *Sua Sponte*, On Motion for Facilitation of Notice to Class Members. (Doc. 33). That order
24 approved the form and substance of a potential notice to class members. In an amendment to the
25 order filed on May 9, 2006, Judge O'Neill required defendant to disclose the name and last
26 known address of all truck drivers potentially satisfying the "opt-in" class definition certified by
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1 the Court. (Doc. 35).

2 **DISCUSSION**

3 This Court has authority to facilitate notice to potential class members. The Supreme
4 Court has held that court authorization and facilitation of the notice process of such actions,
5 under certain circumstances, is proper, "if not necessary." E.g., Hoffman-La Roche Inc. v.
6 Sperling, 493 U.S. 165, 110 S. Ct. 482, 486, 107 L. Ed. 2d 480 (1989) (approval of court
7 facilitation in ADEA cases). In the instant case, the parties do not dispute that this Court has
8 authority to facilitate notice to potential class members. In addition, the parties do not dispute
9 the form or the substance of the notice. Indeed, plaintiffs' motion is similar in all material
10 respects to the comparable motion made earlier in this case with respect to the opt-in class
11 (Doc. 22), and granted by Judge O'Neill on May 5, 2006. (Doc. 33). Accordingly, the form
12 and substance of the notice are approved.

13 Finally, on October 17, 2006, defendant filed a Statement of Non-Opposition To Motion
14 For Order Approving Notice To Potential Class 2 Members. (Doc. 69). In that document,
15 defendant indicates that it has no opposition, in principal, to such notice since the Court had
16 previously approved a similar notice. (Doc. 69, p. 2). However, defendant points out that "in the
17 absence of a submitted proposed Order," any relief granted by the Court "must be very narrowly
18 limited to the specifically requested relief...." (Id.). On October 17, 2006, plaintiffs filed a
19 proposed order granting plaintiffs' motion. (Doc. 70). Defendant has not filed any objections to
20 the proposed order submitted by plaintiffs.

21 **ORDER**

22 For the foregoing reasons, the Court makes the following orders:

- 23 1. Plaintiffs' Motion for Order Approving Notice to Potential Class 2 Members
24 (Doc. 62) is GRANTED.
- 25 2. Within ten (10) days of the date of service of this Order, defendant shall provide
26 plaintiffs' counsel with a written list of the names and last known addresses of all truck
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1 drivers potentially satisfying the "opt-out" class definition (Class 2) as certified by this
2 Court.

3 3. Within ten (10) days of the date of receipt of the list of potential Class 2 members as
4 described above, plaintiffs' counsel shall mail notices to each potential Class 2 member,
5 in the form attached hereto as Exhibit A.
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7 IT IS SO ORDERED.

8 Dated: November 8, 2006

/s/ Theresa A. Goldner
Honorable Theresa A. Goldner
United States Magistrate Judge

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RICHARD REES, et al.,)
individually and on behalf of)
all others similarly-situated,))
)
 Plaintiffs,)
vs.)
)
SOUZA'S MILK TRANSPORTATION)
CO., INC.,)
)
 Defendant.)
_____)
TO: CURRENT AND FORMER SOUZA TRUCK DRIVERS

NOTICE OF OVERTIME CLASS ACTION LAWSUIT

IF YOU WORKED AS A TRUCK DRIVER FOR SOUZA'S MILK TRANSPORTATION CO. AT ANY TIME ON OR AFTER February 28, 2001, THIS NOTICE MAY AFFECT YOUR RIGHTS.

PLEASE READ THIS NOTICE CAREFULLY

Introduction

The purpose of this notice is to advise you of an overtime lawsuit that has been filed against **SOUZA'S MILK TRANSPORTATION CO.** and to advise you of the legal rights you have in connection with that suit.

Description Of The Lawsuit

On February 28, 2005, RICHARD REES and ROBERT WINTERS, on behalf of themselves and other truck drivers, filed a lawsuit against SOUZA'S MILK TRANSPORTATION CO. alleging that they worked for **SOUZA'S MILK TRANSPORTATION CO.** as truck drivers and were entitled to overtime compensation for hours worked in excess of forty (40) per week, but that **SOUZA'S MILK TRANSPORTATION CO.** did not pay them any overtime. Defendant **SOUZA'S MILK TRANSPORTATION CO.** denies all of the allegations in the lawsuit and denies that it owes or that plaintiffs are entitled to any overtime compensation.

Definition Of The Class

The plaintiffs RICHARD REES and ROBERT WINTERS seek to recover overtime compensation for themselves and, also, on behalf of a class of other similarly-situated truck drivers. On April 23, 2006 the Court certified a class (Class 2) of similarly-situated truck drivers. You may be a member of Class 2 if you meet the following definition:

1. You worked as a truck driver for **SOUZA'S MILK TRANSPORTATION CO.** at any time on or after February 28, 2001.
2. You hauled dairy products from processing plants to warehouses and/or retail outlets solely within the State of

California. In other words, you did not do any hauling of dairy products across state lines.

3. You worked in excess of 40 hours per week without being paid overtime compensation by **SOUZA'S MILK TRANSPORTATION CO.** for those excess hours.

You have been sent this notice because you have been identified as a potential member of Class 2.

Your Right To Participate In This Lawsuit

If you fit the definition above, you are automatically considered a participant in this lawsuit to recover overtime compensation, **UNLESS** you request to be excluded. If you do request to be excluded, you will not be entitled to receive any overtime compensation or other relief from **SOUZA'S MILK TRANSPORTATION CO.** in this case if it is determined that any truck drivers are entitled to overtime compensation.

If you decide to remain in this case, you will be bound by the judgment, whether it is favorable or unfavorable.

Your Legal Representation If You Remain In The Case

If you decide to remain in this lawsuit, your interests will be represented by plaintiffs' attorney, who has been appointed by the Court as counsel for the class. The class counsel is:

Jerry N. Budin
LAW OFFICE OF JERRY BUDIN
1500 J Street
Modesto, CA 95354
Telephone: (209) 544-3030
Facsimile: (209) 544-3144

Class counsel's costs and fees will be paid out of any recovery or judgment against **SOUZA'S MILK TRANSPORTATION CO.**

However, you are not required to be represented by class counsel. You may make an appearance through a different attorney of your own choice, at your own expense. If you choose to be represented by another attorney, that attorney must enter your appearance by _____ (date to be inserted - 60 days after mailing).

No Opinion Expressed As To The Merits Of The Case

This notice is for the sole purpose of determining the identity of those truck drivers who wish to be involved in this case. Although the Court has authorized the sending of this notice, the Court has taken no position regarding the ultimate outcome of the case.

How To Exclude Yourself From This Lawsuit

If you wish to exclude yourself from this lawsuit and give up your right to receive any overtime compensation or other relief from **SOUZA'S MILK TRANSPORTATION CO.**, you must submit a written request for exclusion to class counsel at the address below. The request must be in writing and should include the name and number

of the case (Rees v. Souza's Milk Transportation, Case No. 05-0297), state your desire to be excluded from Class 2, contain your name, address and telephone number and bear your signature with your name printed below your signature.

Please remember this **DEADLINE**: Unless class counsel receives the request for exclusion by **(date to be inserted - 60 days after mailing)**, you will remain a participant in this case.

Further Information

Further information about this case and the procedures and deadline for requesting Exclusion from Class 2 can be obtained by calling or writing to class counsel as follows:

Jerry N. Budin, Esq.
LAW OFFICE OF JERRY BUDIN
1500 J Street
Modesto, CA 95354
Telephone: (209) 544-3030
Facsimile: (209) 544-3144

DEADLINE TO REQUEST EXCLUSION IS
(Date to be inserted - 60 days after mailing)